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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
Trenton Vicinage
Civil Division

KIPCON, INC.,	:	Case No. 3:17-cv-03190
	:	
Plaintiff,	:	
	:	
v.	:	
D.W. SMITH ASSOCIATES, LLC,	:	
LYNN VOORHEES,	:	
EUGENE KAZMIER, and	:	
JENNIFER NEVINS,	:	
	:	
Defendants.	:	

COMPLAINT FOR A CIVIL CASE AND DEMAND FOR JURY TRIAL

By way of complaint before the above-captioned court, the Plaintiff, Kipcon, Inc., avers the following:

I. PARITES

1. The Plaintiff, Kipcon, Inc. (hereinafter "Plaintiff" or "Kipcon"), is a corporation duly formed under the laws of the State of New Jersey, which has its principal place of business at 1215 Livingston Avenue, Suite 200, North Brunswick, New Jersey 08902.

2. The Defendant, D.W. Smith Associates, LLC (hereinafter "Defendant DW" or "DW"), is, upon information and belief, a limited liability company formed under the laws of the State

of New Jersey, which has its principal place of business of 1450 State Route 34, Wall Township, New Jersey 07753.

3. The Defendant, Lynn Voorhees (hereinafter "Defendant Voorhees" or "Voorhees"), is an individual, whose address, upon information and belief, is 111 Fresh Pond Road, Monroe, New Jersey 08831.

4. The Defendant, Eugene Kazmier (hereinafter "Defendant Kazmier" or "Kazmier"), is an individual, whose address, upon information and belief, is 455 Ocean Boulevard, Long Branch, New Jersey 07740.

5. The Defendant, Jennifer Nevins (hereinafter "Defendant Nevins" or "Nevins"), is an individual, whose address, upon information and belief, is 1355 Tamarack Road, Manasquan, New Jersey 08736.

II. JURISDICTION AND VENUE

6. This Court has personal jurisdiction over DW by virtue of their transacting, doing, and soliciting business in New Jersey.

7. This Court has personal jurisdiction over Voorhees who is domiciled in New Jersey and works for DW within New Jersey.

8. This Court has personal jurisdiction over Kazmier who is domiciled in New Jersey and works for DW within New Jersey.

9. This Court has personal jurisdiction over Nevins who is domiciled in New Jersey and works for DW within New Jersey.

10. This case arises under the Copyright Act, 17 U.S.C. Sec. 101, *et seq*.

11. Pursuant to 28 U.S.C. Sec. 1331 and 1338, this Court has original jurisdiction over this copyright infringement civil action and over related state law claims.

12. Venue in this District is proper under 28 U.S.C. Sec. 1391(b) and 28 U.S.C. Sec. 1400(a).

III. FACTS PERTINENT TO ALL CAUSES OF ACTION

13. Kipcon is an engineering firm.

14. DW is also an engineering firm that competes with Kipcon.

15. Voorhees was an employee of Kipcon from April 19, 1993 until March 9, 2012. She was the Director of Business and Development/Senior Project Manager at Kipcon. Voorhees was not terminated by Kipcon, rather she voluntarily left Kipcon and immediately began employment with DW.

16. Kazmier was an employee of Kipcon from January 18, 2007 until October 15, 2008. He was a Project Manager at Kipcon before his termination. Thereafter, Kazmier began employment with DW.

17. Nevins is the President of DW. She joined DW in 1988 and became an owner of DW in 2001.

18. Kipcon has developed certain proprietary and copyrighted works (including, without limitation, Reserve Studies for Community Associations and Transition Reports for Community Associations).

19. During the course of their employment with Kipcon, Voorhees and Kazmier had access to all of Kipcon's proprietary and copyrighted works (including, without limitation, Reserve Studies and Transition Studies), Kipcon's form template computer files with which to create Kipcon's copyrighted works, and Kipcon's email customer email list. Further, Voorhees and Kazmier prepared numerous Reserve Studies and Transition Studies using Kipcon's proprietary and copyrighted works and using Kipcon's form template computer files.

20. On numerous occasions during her employment with Kipcon, Voorhees emailed herself at her personal email address (ldonde2@aol.com) from her work address (LVoorhees@Kipcon.com). These emails contained attachments of Kipcon's form template computer files for Reserve Studies and Transition Studies. Specific known dates wherein Voorhees emailed herself these files are August 1, 2010, May 17, 2010, February 14, 2007, and October 18, 2006.

21. During their subsequent employment with DW, Voorhees and Kazmier used Kipcon's proprietary and copyrighted works and Kipcon's form template computer files in preparing Reserve Studies and Transition Studies for DW.

22. For example, on April 14, 2017, Kipcon discovered that Voorhees and DW had created a March 1, 2013 Reserve Study for Trendmaker Homes North at Quailbrook Condominium Association that infringed Kipcon's proprietary and copyrighted works. Furthermore, shortly thereafter, Kipcon discovered that Voorhees, Kazmier, and DW had created a May 1, 2016 Reserve Study for Lake Como Condominium Association that infringed Kipcon's proprietary and copyrighted works. Moreover, shortly thereafter, Kipcon discovered that DW had created a 2016 Transition Study for Lake Como Condominium Association that infringed Kipcon's proprietary and copyrighted works.

IV. CAUSES OF ACTION

COUNT ONE – DIRECT COPYRIGHT INFRINGEMENT

23. All allegations made heretofore are hereby incorporated in this count as if set forth at length.

24. DW, Voorhees, Kazmier, and Nevins have directly infringed Kipcon's copyrights in and relating to Kipcon's proprietary and copyrighted works, specifically, without limitation, the Reserve Study and Transition Study.
25. DW, Voorhees, Kazmier, and Nevins have reproduced Kipcon's proprietary and copyrighted works, prepared derivative works based on them, distributed them, and displayed them publicly, all of which were without permission and in violation of 17 U.S.C. Sec. 106 and 17 U.S.C. Sec. 501.
26. DW's, Voorhees', Kazmier's, and Nevins' acts of infringement are willful, intentional, and purposeful, in disregard of and with indifference to Plaintiff's rights.
27. As a direct and proximate result of said infringement by DW, Voorhees, Kazmier, and Nevins, Plaintiff has sustained and continues to sustain damages and is entitled to damages in an amount to be proven at trial.
28. Plaintiff is also entitled to DW's, Voorhees', Kazmier's, and Nevins' revenue attributable to the infringement, pursuant to 17 U.S.C. Sec. 504(b), including an accounting of and a constructive trust with respect to such revenue.
29. Plaintiff is further entitled to its attorneys' fees and full costs pursuant to 17 U.S.C. Sec. 505 and otherwise according to law.
30. As a direct and proximate result of the foregoing acts and conduct, Plaintiff has sustained and will continue to sustain substantial, immediate, and irreparable injury, for which there is no adequate remedy at law. Unless enjoined and restrained by this Court, DW, Voorhees, Kazmier, and Nevins will continue to infringe Plaintiff's rights in the proprietary and copyrighted works. As such, Plaintiff is entitled to permanent injunctive relief to restrain and enjoin DW's, Voorhees', Kazmier's, Nevins' infringing conduct.

WHEREFORE, Plaintiff prays for judgment against DW, Voorhees, Kazmier, and Nevins, and each of them jointly and severally as follows: (1) For damages in such amount as may be found, or as otherwise permitted by law; (2) For an accounting of, and the imposition of constructive trust with respect to, DW's, Voorhees', Kazmier's, and Nevins' revenue attributable to their infringement of Plaintiff's proprietary and copyrighted works; (3) For a permanent injunction prohibiting DW, Voorhees, Kazmier, and Nevins and their respective agents, servants, employees, officers, successors, licensees, assigns, and persons acting in concert or participation with each or any of them, from continuing to infringe Plaintiff's copyrights; (4) For prejudgment interest according to law; (5) For Plaintiff's attorneys' fees, costs, and disbursements in this action; (6) For statutory damages; and (7) For such other and further relief as this Court may deem just and proper.

COUNT TWO – CONTRIBUTORY COPYRIGHT INFRINGEMENT

31. All allegations made heretofore are hereby incorporated in this count as if set forth at length.

32. DW and Nevins directly encouraged, facilitated, and/or induced the unauthorized reproduction, distribution, adaptation, and public display of Kipcon's proprietary and copyrighted works by Voorhees and Kazmier. As such, Defendant is contributorily liable for Plaintiff's damages resulting from same.

WHEREFORE, Plaintiff prays for judgment against DW and Nevins, and each of them jointly and severally as follows: (1) For damages in such amount as may be found, or as otherwise permitted by law; (2) For an accounting of, and the imposition of constructive trust with respect to, DW's and Nevins' revenue attributable to their infringement of Plaintiff's proprietary and copyrighted works; (3) For a permanent injunction prohibiting DW and Nevins and their respective agents, servants, employees, officers, successors, licensees, assigns, and persons acting in concert or participation with each or any of them, from continuing to infringe Plaintiff's copyrights; (4) For prejudgment interest according to law; (5) For Plaintiff's attorneys' fees, costs, and disbursements in this action; (6) For statutory damages; and (7) For such other and further relief as this Court may deem just and proper.

COUNT THREE – MALICIOUS INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE

33. All allegations made heretofore are hereby incorporated in this count as if set forth at length.
34. DW, Voorhees, Kazmier, and Nevins maliciously, without justification or excuse, interfered within Kipcon's pursuit of prospective economic by using Kipcon's proprietary and copyrighted works.
35. There was a reasonable expectation of economic advantage to Kipcon from various community associations.
36. There is a reasonable probability that DW's, Voorhees', Kazmier's, and Nevins' interference caused the loss of the prospective gain.
37. DW, Voorhees, Kazmier, and Nevins are therefore liable for damages caused by their interference.

WHEREFORE, Plaintiff prays for judgment against DW, Voorhees, Kazmier, and Nevins, and each of them jointly and severally, as follows: (1) For compensatory damages; (2) For a permanent injunction prohibiting DW, Voorhees, Kazmier, and Nevins and their respective agents, servants employees, officers, successors, licensees, assigns, and persons acting in concert or participation with each or any of them from using Plaintiff's proprietary and copyrighted works; (3) For prejudgment interest according to law; (4) For Plaintiff's attorneys' fees, costs, and disbursements in this action; and (5) For such other and further relief as this Court may deem just and proper.

COUNT FOUR – INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE

38. All allegations made heretofore are hereby incorporated in this count as if set forth at length.
39. DW, Voorhees, Kazmier, and Nevins intentionally, without justification or excuse, interfered within Kipcon's pursuit of prospective economic by using Kipcon's proprietary and copyrighted works.
40. There was a reasonable expectation of economic advantage to Kipcon from various community associations.
41. There is a reasonable probability that DW's, Voorhees', Kazmier's, and Nevins' interference caused the loss of the prospective gain.
42. DW, Voorhees, Kazmier, and Nevins are therefore liable for damages caused by their interference.

WHEREFORE, Plaintiff prays for judgment against DW, Voorhees, Kazmier, and Nevins, and each of them jointly and severally, as follows: (1) For compensatory damages; (2) For a permanent injunction prohibiting DW, Voorhees, Kazmier, and Nevins and their respective agents, servants employees, officers, successors, licensees, assigns, and persons acting in concert or participation with each or any of them from using Plaintiff's proprietary and copyrighted works; (3) For prejudgment interest according to law; (4) For Plaintiff's attorneys' fees, costs, and disbursements in this action; and (5) For such other and further relief as this Court may deem just and proper.

COUNT FIVE – MISAPPROPRIATION OF TRADE SECRET

43. All allegations made heretofore are hereby incorporated in this count as if set forth at length.

44. Defendant Voorhees improperly acquired trade secrets of Kipcon, specifically Kipcon's email list of community associations with which it does business, Kipcon's proprietary and copyrighted works (by emailing herself the files of the works), and Kipcon's form template computer files with are used to create Kipcon's proprietary and copyrighted works (by emailing herself the form template computer files). Defendant Voorhees improperly used and/or disclosed Kipcon's trade secrets.

45. As a result of Voorhees' conduct, Kipcon has suffered damages.

WHEREFORE Plaintiff prays for judgment against Voorhees as follows: (1) For compensatory damages; (2) For a permanent injunction prohibiting Voorhees and her respective agents, and persons acting in concert or participation with her from using Plaintiff's trade secrets (email list, proprietary and copyrighted works, and form template computer files); (3) For unjust enrichment damages; (4) For punitive damages for willful and malicious misappropriation; (5) For prejudgment interest according to law; (6) For Plaintiff's attorneys' fees, costs, and disbursements in this action; and (7) For such other and further relief as this Court may deem just and proper.

COUNT SIX – MISAPPROPRIATION OF TRADE SECRET

46. All allegations made heretofore are hereby incorporated in this count as if set forth at length.

47. Defendants DW, Kazmier, and Nevins used Kipcon's trade secret, specifically Kipcon's proprietary and copyrighted works and Kipcon's form template computer files with are used to create Kipcon's proprietary and copyrighted works, without express or implied

consent of Kipcon, where improper means were used to acquire the trade secret, and DW, Kazmier, and Nevins knew or had reason to know that the trade secret was acquired through improper means.

48. As a result of Voorhees' conduct, Kipcon has suffered damages.

WHEREFORE Plaintiff prays for judgment against DW, Kazmier, and Nevins, and each of them jointly and severally, as follows: (1) For compensatory damages; (2) For a permanent injunction prohibiting DW, Kazmier, and Nevins and their respective agents, servants employees, officers, successors, licensees, assigns, and persons acting in concert or participation with each or any of them from using Plaintiff's trade secret (proprietary and copyrighted works and form template computer files); (3) For unjust enrichment damages; (4) For punitive damages for willful and malicious misappropriation; (5) For prejudgment interest according to law; (6) For Plaintiff's attorneys' fees, costs, and disbursements in this action; and (7) For such other and further relief as this Court may deem just and proper.

COUNT SEVEN – TRADE SECRET DISCLOSED AND/OR USED WRONGFULLY

49. All allegations made heretofore are hereby incorporated in this count as if set forth at length.

50. Defendant Voorhees, during her employ with Kipcon and in confidence, had access to Kipcon's trade secrets, including, without limitation, Kipcon's customer email list, Kipcon's proprietary and copyrighted works, and Kipcon's form template computer files with are used to create Kipcon's proprietary and copyrighted works.

51. Defendant Voorhees disclosed Kipcon's trade secrets Defendants DW, Nivens, and Kazmier, by emailing the trade secrets to herself for use in her subsequent employment with DW.

52. Defendant Voorhees disclosure and subsequent use of Kipcon's trade secrets is therefore not for the benefit of Kipcon, but rather to Kipcon's detriment, resulting in damages to Kipcon.

WHEREFORE Plaintiff prays for judgment against Voorhees as follows: (1) For compensatory damages; (2) For a permanent injunction prohibiting Voorhees and their respective agents and persons acting in concert or participation with Voorhees from using Plaintiff's trade secret (email list, proprietary and copyrighted works, and form template computer files); (3) For unjust enrichment damages; (4) For punitive damages for willful and malicious disclosure and use of the trade secret; (5) For prejudgment interest according to law; (6) For Plaintiff's attorneys' fees, costs, and disbursements in this action; and (7) For such other and further relief as this Court may deem just and proper.

COUNT EIGHT – AIDING THE COMMISSION OF TORT

53. All allegations made heretofore are hereby incorporated in this count as if set forth at length.

54. DW, Voorhees, Kazmier, and Nevins pursued a common plan or design to commit a tort(s) (any and all torts pled in this Complaint) upon Plaintiff Kipcon.

55. DW, Voorhees, Kazmier, and Nevins actively participated, aided, encouraged, and/or ratified the wrong.

56. As such, DW, Voorhees, Kazmier, and Nevins are jointly and severally liable in damages to Plaintiff Kipcon who was injured by the tort(s) (any and all torts pled in this Complaint).

WHEREFORE Plaintiff prays for judgment against DW, Voorhees, Kazmier, and Nevins, and each of them jointly and severally, as follows: (1) For compensatory damages; (2) For a permanent injunction prohibiting DW, Voorhees, Kazmier, and Nevins and their respective agents, servants employees, officers, successors, licensees, assigns, and persons acting in concert or participation with each or any of them from using Plaintiff's email list, proprietary and copyrighted works, and form template computer files; (3) For unjust enrichment damages; (4) For punitive damages for willful and malicious conduct; (5) For prejudgment interest according to law; (6) For Plaintiff's attorneys' fees, costs, and disbursements in this action; and (7) For such other and further relief as this Court may deem just and proper.

COUNT NINE – CONSPIRACY TO COMMIT TORT

57. All allegations made heretofore are hereby incorporated in this count as if set forth at length.

58. DW, Voorhees, Kazmier, and Nevins, acting in concert to commit an unlawful act and/or commit a lawful act by unlawful means, entered into an agreement to inflict wrong against Plaintiff Kipcon (to wit: any and all causes of action pled in this Complaint).

59. As such, DW, Voorhees, Kazmier, and Nevins are equally and vicariously liable for damages sustained by Plaintiff Kipcon that have been caused by any of the overt acts heretofore alleged.

WHEREFORE Plaintiff prays for judgment against DW, Voorhees, Kazmier, and Nevins, and each of them jointly and severally, as follows: (1) For compensatory damages; (2) For a permanent injunction prohibiting DW, Voorhees, Kazmier, and Nevins and their respective agents, servants employees, officers, successors, licensees, assigns, and persons acting in concert or participation with each or any of them from using Plaintiff's email list, proprietary and copyrighted works, and form template computer files; (3) For unjust enrichment damages; (4) For punitive damages for willful and malicious conduct; (5) For prejudgment interest according to law; (6) For Plaintiff's attorneys' fees, costs, and disbursements in this action; and (7) For such other and further relief as this Court may deem just and proper.

COUNT TEN – BREACH OF CONTRACT

60. All allegations made heretofore are hereby incorporated in this count as if set forth at length.

61. In consideration of employment and continued employment with Kipcon, Defendants Voorhees and Kazmier executed confidentiality agreements and other employee manuals and policies with Kipcon.

62. Defendants Voorhees and Kazmier have breached these agreements by their conduct pled in this Complaint, including, without limitation, disclosing and using Kipcon's proprietary and copyrighted works and form template computer files outside of their employment with Kipcon.

63. As a result of Defendant Voorhees' and Kazmier's conduct, Kipcon has sustained damages.

WHEREFORE Plaintiff prays for judgment against Voorhees and Kazmier, and each of them jointly and severally, as follows: (1) For compensatory damages; (2) For a permanent injunction prohibiting Voorhees and Kazmier and their respective agents and persons acting in concert or participation with each or any of them from using Plaintiff's email list, proprietary and copyrighted works, and form template computer files; (3) For unjust enrichment damages; (4) For punitive damages for willful and malicious conduct; (5) For prejudgment interest according to law; (6) For Plaintiff's attorneys' fees, costs, and disbursements in this action; and (7) For such other and further relief as this Court may deem just and proper.

V. DEMAND FOR TRIAL BY JURY

Pursuant to Fed. R. Civ. Pro. 38, demand is hereby made for trial by jury on all issues triable of right by a jury.

VI. REPRESENTATIONS TO THE COURT

Pursuant to Fed. R. Civ. Pro. 11(b), by signing below, the undersigned certifies that to the best of his knowledge, information, and belief, formed after an inquiry reasonable under the circumstances: (1) this Complaint is not being presented for any purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) the claims and other legal contentions are warranted by existing law or by nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law; and (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery.

s/ Darren M. Pfeil, Esq.____________
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